

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket No. 15019US01)

***In the Application of:***

Darwin Rambo et al.

***Serial No.:*** 10/620,474

***Filed:*** July 16, 2003

***For: VOICE QUALITY ANALYSIS  
TECHNIQUE***

***Examiner:*** Qi Han

***Group Art Unit:*** 2626

***Confirmation No.:*** 8619

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Transmitted via the Office electronic filing  
system October 22, 2010.

**APPLICATION FOR RECONSIDERATION OF THE  
DETERMINATION OF PATENT TERM ADJUSTMENT  
UNDER 35 U.S.C. 154(b)  
ACCOMPANYING THE NOTICE OF ALLOWANCE  
(37 CFR § 1.705)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

Sir:

The Applicants respectfully request reconsideration of the Determination of Patent Term Adjustment Under 35 U.S.C. 154(b) (PTOL-85) accompanying the Notice of Allowance mailed July 26, 2010 ("the Decision"), to the extent indicated in the following discussion and the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR. This application for reconsideration of the Decision is being filed after the date of mailing of the Notice of Allowance and no later than the payment of the issue fee.

This application for reconsideration of the Decision is accompanied by the fee set forth in § 1.18(e) (\$200).

This application for reconsideration of the Decision includes below a statement of the facts involved in sufficient detail to allow the United States

Patent and Trademark Office (USPTO) to reach the correct patent term adjustment respecting the disputed items.

The Applicants' calculation shows that the correct patent term adjustment should be 2079 days.

The bases under § 1.702 for the adjustment are as follows.

## **Positive Patent Term Adjustment**

### **Three Year Guarantee (35 USC § 154(b)(1)(B))**

The USPTO calculation of the patent term adjustment under the three-year deadline for issuing a patent after its filing date was 0 days. The Applicants disagree with this determination because the patent term adjustment on this ground should instead be 1661 days, minus 220 days consumed by appeals, for a net adjustment of 1441 days.

Specifically, the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR shows that:

- the actual filing date of the application was July 16, 2003,
- the third anniversary of the actual filing date was July 16, 2006,
- the USPTO projected in the DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 USC 154(b) that the patent will issue on the first Tuesday preceding the 28th week after July 26, 2010 (the mailing date of the Determination of Patent Term Adjustment under 35 USC 154(b)), which results in a predicted patent issue date of February 1, 2011,
- the predicted patent issue date stated in the last point will be 1661 days after the third anniversary of the actual filing date, which is the appropriate patent term adjustment.

The patent term adjustment under the three-year rule was reduced by appeals.

- review by the Board or a Federal court began on the date the first Notice of Appeal was filed, i.e. November 10, 2008,
- the time consumed by review by the Board or a Federal court ended on the date of (1) a Board of Patent Appeals and Interferences decision, a Federal court decision, or a Board remand, or (2) the date prosecution was reopened, i.e. January 15, 2009,
- the time consumed by the appeal thus ended on January 15, 2009, after an interval of 66 days.
- review by the Board or a Federal court began on the date the second Notice of Appeal was filed, i.e. February 22, 2010,
- the time consumed by review by the Board or a Federal court ended on the date of (1) a Board of Patent Appeals and Interferences decision, a Federal court decision, or a Board remand, or (2) the date prosecution was reopened, i.e. July 26, 2010,
- the time consumed by the appeal thus ended on July 26, 2010, after an interval of 154 days.
- The patent term adjustment under the three-year rule of 1661 days, reduced by a total appeal time of 220 days, is thus 1441 days.

## **Reductions in Patent Term Adjustment**

### **Removing Overlap**

- Two or more grounds of delay overlap from July 16, 2006, to February 21, 2007, totaling 220 days of delay.
- Two or more grounds of delay overlap from September 9, 2007, to June 10, 2008, totaling 275 days of delay.
- Two or more grounds of delay overlap from January 10, 2009, to March 24, 2009, totaling 73 days of delay.

This overlap has been subtracted from the patent term adjustment in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR.

**Three Months to Respond to Office actions (37 CFR § 1.704(b))**

The Applicants are contesting the following application(s) of 37 CFR § 1.704(b) to reduce the patent term adjustment in the present application.

**Period from February 20, 2010, to February 22, 2010**

- The pertinent Office action was mailed on November 20, 2009,
- The date three months after the mailing date of the Office action is Saturday, February 20, 2010,
- The response to the Office action was filed on Monday, February 22, 2010,
- The reduction in the patent term adjustment proposed by the USPTO is 2 days,
- The Applicants' position is that the present Office action response filed on the first business day after a deadline falling on a weekend or holiday is not late, establishing the correct reduction in patent term adjustment is 0 days. The basis for this position is 37 CFR § 1.6(a)(1), which states in relevant part, "The Patent and Trademark Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia," and 35 USC § 21(b), which states: "When the day, or the last day, for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or fee paid, on the next succeeding secular or business day." See also, 37 CFR § 1.7(a). In this case, 37 CFR § 1.7(a) is applicable because the last day set by statute (35 USC § 154(b)(2)(C)(ii)) for taking the action of filing a response to an

Office action without being “deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application,” falls on a Saturday, Sunday, or on a Federal holiday within the District of Columbia.

### **Net Patent Term Adjustment**

The changes requested by the Applicants to the USPTO patent term adjustment determination in the Decision are as follows:

#### **Positive Patent Term Adjustment**

- **Three Year Guarantee**  
(35 USC § 154(b)(1)(B))

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation</b>	0
<b>Applicant Calculation</b>	1441

#### **Reductions in Patent Term Adjustment**

- **Removing Overlap**

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation</b>	0
<b>Applicant Calculation</b>	568

- **Three Months to Respond to Office actions**  
(37 CFR § 1.704(b))

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation</b>	2
<b>Applicant Calculation</b>	0

## **Conclusion**

The Applicants request modification of the patent term adjustment as indicated above. As shown in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR, the patent term adjustment proposed by the Applicant is thus 2079 days.

Please charge any fees or credit any overpayment of fees presently required to McAndrews, Held & Malloy, Ltd., Deposit Account No. 13-0017.

Respectfully submitted,

McANDREWS, HELD & MALLOY, LTD.

Date: October 22, 2010

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